

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

JUL 21 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Sections of)
the Cable Television Consumer)
Protection and Competition Act)
of 1992)

Rate Regulation)

MM Docket 92-266

EMERGENCY PETITION FOR IMMEDIATE IMPLEMENTATION
OF EMERGENCY RULE PERMITTING IMMEDIATE RATE REGULATION

Pursuant to 5 U.S.C. § 553(b)(B) and 47 C.F.R. § 1.3,
Consumer Federation of America, Media Access Project, Public
Citizen and Center For Media Education (hereinafter "Consumers")
respectfully petition for immediate implementation of an
emergency rule permitting immediate implementation of rate
regulations by subscribers.

1) In a Report and Order¹ Adopted April 1, 1993
(hereinafter "First Order"), the Commission found that cable
television subscribers were being overcharged by an average of 10
percent based on September 30, 1992 rates.

2) Between September 30, 1992 and April 1, 1993, the date
the cable rate freeze was put into effect, rates have increased
nationally by at least 5 percent, according to trade press
reports. These increases cannot be eliminated until the

¹ Report and Order, MM Dkt. 92-266, Adopted April 1,
1993, Released May 3, 1993.

Commission acts to implement its rate regulations.

3) In the First Order, the Commission ruled that rate regulation would go into effect June 21, 1993. This would be the date of retroactivity for refunds and rollbacks due to excessive rates.

4) According to a subsequent Order² (hereinafter "Second Order") adopted June 11, 1993, the Commission claimed it was unable to implement the rules it had adopted until October 1, 1993 due to a lack of resources.

5) Since issuing the Second Order, the Commission has been granted a supplemental appropriation of \$11.5 million to implement the new cable rules.

6) Yesterday, the Commission indicated that even though it has now received a supplemental appropriation, it will not begin implementation of the cable rate regulations until September 1, 1993.

7) Eliminating retroactivity of refunds and rebates for the months of June, July and August will cost consumers up to \$200 million based on the Commission's estimates of savings from its

² Order, MM Dkt. 92-266, Adopted June 11, 1993, Released June 15, 1993.

rate regulation rules. The Commission's claimed temporary inability to implement its rate regulations has nothing to do with, and therefore does not justify changing, the effective date for purposes of rate refunds and rollbacks. Moreover, the industry has had sufficient notice of June 21, 1993 as the original date of retroactivity.

8) Failure to implement the rate regulations adopted by the Commission and bring down rates already found to be excessive will cause irreparable harm to cable subscribers since over-payments for June, July and August could never be recovered.

9) There is no logical reason why the Commission's delay in implementation of the processes and mechanisms involved in rate regulation necessitates delay of the June 21, 1993 effective date for consumers' ultimate remedies: rate refunds and rollbacks.

10) The Commission could create a "self-escrow" mechanism by permitting cable subscribers to refrain from paying their cable rate overcharges without expending Commission resources.

11) Such a mechanism will enable subscribers to see rate reductions to which the Commission has found they are entitled without putting any resource burden on the Commission or terminating any rights of cable subscribers.

12) Such a mechanism would effectuate the Commission's stated goal of "not wish[ing] to delay extending the Act's benefits to consumers."³

WHEREFORE; Petitioners, request emergency action by the Federal Communications Commission adopting the following emergency rule:

A) Subscribers shall be permitted to reduce their current cable rates by deducting 15 percent from their next cable bill⁴ and each bill thereafter, until the Commission's rate regulations are fully implemented;

B) Subscribers wishing to make an estimated withholding from their next cable bill and subsequent bills shall write on their check or their payment stub returned with their check "15% withheld pending FCC action."

C) Subscribers shall remain liable for any amounts withheld if their cable company's rates were not above the Commission's benchmark rates at the time of withholding.

³ Order, MM Dkt. 92-266, Adopted May 14, 1993, Released June 15, 1993.

⁴ The reduction should be made from the price of the regulated tiers of service, not unregulated pay or pay-per-view services.

D) Cable companies shall not be permitted to impose late charges on, or disconnect service to subscribers who withhold 15 percent of their bills pursuant to this emergency rule.

The tremendous amount of money involved, the danger to the economy based on the inflationary effect of unlawful excessive rates being charged and paid, and the irreparable harm caused by the impossibility of granting refunds for June-August overcharges given the Commission's new September 1, 1993 implementation date constitute good cause for finding that ordinary notice and hearing requirements of the Administrative Procedure Act are impracticable, unnecessary and contrary to the public interest pursuant to 5 U.S.C. § 553(b)(3)(B).

For the same reasons, pursuant to its authority under 47 C.F.R. § 1.3, the Commission should waive the procedural requirements contained in 47 C.F.R. § 1.411 et. seq. to the extent necessary to dispose with notice and comment and advance publication, and to afford all such other expedition as may be required.

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